

STATE OF MICHIGAN
COURT OF APPEALS

JUDITH PLANTZ,

Petitioner-Appellee,

v

JAMES RALSTON,

Respondent-Appellant.

UNPUBLISHED

May 19, 2009

No. 285390

Clinton Circuit Court

LC No. 07-019999-PP

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's ruling finding him in criminal contempt for violating a personal protection order (PPO). MCL 600.2950a(20). Defendant was sentenced to jail for 93 days with credit for 13 days served. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Petitioner sought and obtained a PPO early October 2007. The PPO prohibited respondent from contacting or harming petitioner, including "sending mail or other communication to petitioner." The trial court denied respondent's request to terminate the PPO following a hearing on October 22, 2007.

On February 19, 2008, petitioner filed a Motion and Order to Show Cause alleging that respondent violated the PPO by mailing letters containing threats against petitioner to her brother and neighbor. At the March 10, 2008, hearing petitioner testified that shortly after the PPO was issued, respondent began sending threatening letters to petitioner's brother and her neighbor intending that she receive them. The trial court found that respondent violated the PPO, ruling that respondent "cannot do through others what he cannot do himself." The trial court also found that the "tone, language and anger" in the letters was "threatening and intimidating" and that respondent intended the letters be communicated to petitioner "as he sent those to her brother and to her neighbor." Ultimately, the trial court found "that the Petitioner has met her burden by clear and—beyond a reasonable doubt, that Mr. Ralston is in criminal contempt of this Court." Respondent filed a motion for resentencing, which the trial court denied.

On appeal, respondent argues that he did not violate the PPO, which prohibited him from "sending mail or other communications to petitioner." Testimony was clear that respondent did not send mail or other communications directly to petitioner. Therefore, respondent contends the

trial court's finding of criminal contempt was not supported by competent evidence and comprised an abuse of discretion.

A trial court's findings in a contempt proceeding must be affirmed on appeal if there is competent evidence to support them. *In re Contempt of Henry*, 282 Mich App 656; ___ NW2d ___ (Docket Numbers 280372 and 281318, issued March 17, 2009), slip op, p 6. "The issuance of an order of contempt rests in the sound discretion of the trial court, and is reviewed only for an abuse of discretion." *Id.*

A person who fails to comply with a PPO is subject to the criminal contempt powers of the court. MCL 600.2950a(20). To support a finding of criminal contempt, "an alleged contemnor's 'willful disregard or disobedience' of a court order and a clearly contemptuous act must be proved beyond a reasonable doubt." *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 714; 624 NW2d 443 (2000) (citation omitted); see also MCR 3.708(H)(3). Contrary to respondent's assertion, there is no indication in the record that the trial court misapplied the appropriate burden of proof. The fact that the court reached a conclusion at odds with respondent's position does not indicate that it applied the wrong burden of proof.

The finding that respondent willfully disregarded the PPO is supported by competent evidence. The PPO ordered respondent to refrain from taking several specifically enumerated actions, including "sending mail or other communications to petitioner." We agree with the trial court's conclusion that respondent violated the PPO by disregarding this prohibition. Respondent sent one letter to petitioner's brother with the instruction to "pass this on to the owner of my PPO." The writing contained a variety of expletives and various references to "Satan," the "devil," stalking, and "revenge." That writing was also sent to petitioner's neighbor and was entitled "Payback's a 'bitch'" and was signed by "Jonny F?ckin' Rotten 666." Another letter, titled "Psychology '101,'" contained explicit sexual references and was signed "666." Although respondent denied that he intended for petitioner to see the letters, the trial court reasonably concluded that because the recipients of the letters were petitioner's brother and neighbor and one letter explicitly directed that it be forwarded to the owner of the PPO, respondent did intend for petitioner to see the letters. Further, the letters were actually forwarded to and seen by petitioner.

Respondent's actions violated the prohibition against sending communications to petitioner. Although testimony on this point was contradictory, an appellate court may not weigh the evidence or the credibility of witnesses. *In re Contempt of Henry, supra*, slip op at 6. Thus, respondent violated the PPO by sending communications to petitioner through her brother and neighbor.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot
/s/ Douglas B. Shapiro